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(1951) 08 GAU CK 0001

In the Gauhati High Court

Case No : Civil Revision No. 120 of 1950

Rawatmal Mulchand APPELLANT

Vs

Commissioner of Taxes RESPONDENT

Date of Decision : 06-08-1951

Acts Referred:
Assam Sales Tax Act, 1947 — Section 15(1), 17(3), 2(12), 30, 30(4)

Citation : AIR 1951 Guw 183

Hon'ble Judges : T.V. Thadani, C.J;Ram Labhaya, J;Haliram Deka, J

Bench : Full Bench

Advocate : Kedarmal Brahmin, for the Appellant; D.N. Medhi, Government Advocate, for the Respondent

Judgement

Thadani, C.J.—This is an application u/s 32(5) of the Assam Sales Tax Act of 1947 requiring the Commissioner of Taxes, Assam, to state the case for a decision of this Court in a matter arising out of an order passed by the Commissioner of Taxes, Assam, u/s 32(4) of the Act.

2. The petitioners, registered dealers, submitted their return of sales along with their account books for the period ending 30th September 1948, to the Superintendent of Taxes, Tezpur, and claimed exemption from taxation to jute sold to certain registered dealers in Calcutta. The Superintendent of Taxes, Tezpur, rejected the claim and assessed the petitioners u/s 17(3) of the Act. Against the order of the Superintendent of Taxes rejecting their claim, the petitioners preferred an application u/s 31(1) before the Commissioner of Taxes who while rejecting their claim, enhanced the assessment. The petitioners then made an application u/s 32(2) of the Act to the Commissioner retuning him to refer certain questions of law, arising out of the order passed by him, to this Court. The Commissioner of Taxes rejected the application by his order, dated 22-9-50 The petitioners have now come before us u/s 32(5) of the Assam Sales Tax Act, 1947.

3. The questions sought to be referred to this Court are these:

(1) Whether, under the facts and circumstances of the case, the Commissioner was justified in enhancing the assessment in disposing of a Revision petition u/s 31(1) of the Assam Sales Tax Act, 1947.

(2) Whether the Commissioner was justified in passing a prejudicial order by enhancing the amount of tax against which application for vision was preferred before him u/s 31(1) without giving any opportunity to the dealer for being heard against the proposed enhancement as required under the proviso to Sub-section (1) of Section 31 of the Assam Sales Tax Act, 1947.

(3) Whether the consignment of jute despatched out of Assam prior to the commencement of the Assam Sales Tax Act, 1947, and sold thereafter in Calcutta, is a sale within Assam u/s 2(12) of the Act.

(4) Whether the sum of Rs. 3,42,517-0-0 in respect of which the petitioners are assessed to sales tax on the sale of Jute sold in Calcutta through the Commission Agents, is a sale within the meaning of Section 2(12) of the Assam Sales'' Tax Act, 1947.

(5) Whether the sale of goods admittedly made to the registered dealers of Assam require any further documentary evidence other then the account books of the dealer in support of such sales u/s 15(1)(b)(i)(a) and whether the taxing authorities were justified in not allowing deductions in respect of such sales out of the gross turnover, as required u/s 15(1)(b)(i)(a).

At the hearing, the petitioners'' advocate abandoned questions 3, 4 and 5 and prayed that the Commissioner be required to state the case on the first two questions only.

4. The question for our consideration is--whether the Commissioner has power to enhance the assessment in the exercise of his re-visional jurisdiction under the provisions of Section 31(1) of the Assam Sales Tax Act, 1947. The proviso to Section 31(1) is in these terms:

Provided that no order prejudicial to a dealer shall be passed under this Sub-section without giving him a reasonable opportunity of being heard.

5. The powers of the appellate authority under the Assam Sales Tax Act are enumerated in Sub-section (4) of Section 30 of the Act. One of the powers under Clause (a), Sub-section (4) of Section 30 of the Act is the power to enhance the assessment. u/s 31(1), the powers of the Commissioner in revision are subject to the provisions of the Assam Sales Tax Act, 1947. The expression "subject to the provisions of this Act" occurring in Section 31(1), tend to support the view that the powers which the Commissioner can exercise in the exercise of his revisional jurisdiction include the powers of the appellate authority u/s 30 of the Act. The expression subject to the provisions of his Act expresses in a compendious manner the powers of the Commissioner in the exercise of his revisional jurisdiction, which must include the power to enhance for such a power is expressly given to an appellate authority. This view appears to be supported

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by the language of Section 32(2).

6. The first two questions must be read together. If the Commissioner has power to enhance the assessment in the exercise of his revisional jurisdiction u/s 31 of the Act,--and we hold that he has the power must be exercised in accordance with the proviso to Section 31, for, it is common, ground that an order enhancing assessment is an order prejudicial to an assesses. It was contended by the petitioners advocate that no opportunity was given to the petitioners of being heard in the matter of the proposed enhancement, of the assessment. The record of the case, however does not justify the contention. The learned Commissioner in his order, dated 22-9-50, has stated:

As regards questions 1 and 2, the case, was taken up for hearing on 9-1-50 at Shillong. At the time of hearing, on examination of the accounts produced and a statement of sales of jute, submitted by the petitioners it was found that many items of sale of jute were not included in the gross turnover. The hear in a was therefore, adjourned and it was intimate to the representative of the petitioners that a hearing would be given at Tezpur where the firm of the petitioners was situate so that all relevant papers and documents could be produced and examined in details without causing any inconvenience to their daily business. The case was accordingly heard at Tezpur on 8-5-50; an advocate, appeared on behalf of the petitioners on that day. On 9-5-1950, the petitioners also submitted a statement of the sales of jute. The enhancement was made of the materials furnished by the petitioners, and it could not be said that it was done without any basis and without giving the petitioners a reasonable opportunity of being heard. All these are questions of fact, in my opinion, and no reference is competent on these questions.

7. We think the learned Commissioner is right in saying that the proviso to Section 31 of the Assam Sales Tax Act, 1947, has been compiler with. It was conceded by the petitioners advocate that if the proviso to Section 31 has been complied with by the Commissioner, his decision to enhance the assessment rests on facts and not on any point of law.

8. The result is that the petition is dismissed with costs. The rule is discharged.

Deka, J.

9. I agree.

Ram Labhaya, J.

10. I agree

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